

IN THE MATTER OF	:	BEFORE THE
<b>LEE MILLER</b>	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 09-037V

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**DECISION AND ORDER**

On December 14, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Lee Miller (the "Petitioner") for a variance to reduce the 30-foot side setback to 6 feet for a detached garage in an RC-DEO (Residential: Density Exchange Option) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners certified to compliance with the notice, advertising and certification requirements of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Lee Miller testified in support of the petition. No one testified in opposition to the petition.

**FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The 3.336-acre property is located on the north side of the terminus of The Old Station Court. It is located in the 4<sup>th</sup> Election District and identified on Tax Map 3, Block

21, as Parcel 44, Lot 24 (the "Property"). The Property is also known as 885 The Old Station Court.

2. The six-sided Property fronts on The Old Station Court cul-de-sac. It has two front lot lines, one along the cul-de-sac and the second running northeast to the eastern lot line. The lot varies increases in depth to the 300-foot rear lot line.

3. The Property is improved with a two-story single-family detached dwelling sited about 90 feet from the cul-de-sac and about 70 feet from the west side lot line. An asphalt drive sited close to the west lot lines provides access to the Property, then becomes a turnaround on the dwelling's west side. According to Petitioner's Exhibit 1, the septic tank and field lie just beyond the turnaround. A large rear section of the Property is subject to a 100-year floodplain and, drainage and utility easement, within which runs a large stream.

4. Vicinal Properties. Adjacent properties are also zoned RC-DEO and are each improved with similar single-family dwellings.

5. The Proposal. The Petitioner is requesting a variance from Section 110.E.4.a(3) to reduce the 30-foot side setback to six for a detached garage. The 24-foot wide by 28-foot deep garage would be constructed adjacent to the western edge of the turnaround. The garage would be closest to a side garage and driveway on the adjoining property (which has two attached garages).

6. Mr. Miller testified that this is the only viable area for the garage, given the location of the septic tank and field and that two or three-car garages were common in the neighborhood.

**CONCLUSIONS OF LAW**

The standards for variances are contained in Section 130.B.2.a of the Regulations. Pursuant to this section, I may grant a variance only if the Petitioner demonstrates compliance with all four variance criteria. Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

**(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.**

Compliance with this first criterion is a two-part test. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property's six sided lot shape, together with the stream and its attendant easement, are unique conditions causing the Petitioner practical difficulty in complying with the setback requirements, in accordance with Section 130.B.2.a(1).

**(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.**

The encroachment would occur into a side setback. Because the garage would be sited near a side garage and driveway on the adjoining property, its visibility and impact will be mitigated. The petition accords with Section 130.B.2.a(2).

**(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.**

The Petitioners did not create the practical difficulties in complying strictly with the setback regulations, in accordance with Section 130.B.2.a(3).

**(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.**

The proposed two-car garage is a reasonable size. The variance is therefore the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

**ORDER**

Based upon the foregoing, it is this **4<sup>th</sup> Day of January 2010**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Lee Miller for a variance to reduce the 30-foot rear setback to 6 feet for an attached garage in an RC-DEO (Residential: Density Exchange Option) is **GRANTED**;

**Provided, however, that:**

1. The variance shall apply only to the uses and structures as described in the petition submitted and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall obtain all necessary permits.
3. The Petitioner shall comply with all agency comments.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



**Michele L. LeFaivre**

**Date Mailed:** \_\_\_\_\_

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.